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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/677,910	10/03/2000	Stefan Reuss	B0932/7154	7492

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EXAMINER

VANAMAN, FRANK BENNETT

ART UNIT	PAPER NUMBER
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3618

DATE MAILED: 03/26/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.  
09/677,910

Applicant(s)  
Reuss et al.

Examiner  
Vanaman

Art Unit  
3611



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-63 is/are pending in the application.
- 4a) Of the above, claim(s) 24-26 and 48-50 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3, 9, 12-15, 19-23, 27, 33, 36-39, 43-47, 51-56, and 63 is/are rejected.
- 7) ☒ Claim(s) 4-8, 10, 11, 16-18, 28-32, 34, 35, 40-42, and 57-62 is/are objected to.
- 8) ☐ Claims \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
- a) ☐ All b) ☐ Some\* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

- 15) ☒ Notice of References Cited (PTO-892)
- 16) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 17) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 3, 5, 8
- 18) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 19) ☐ Notice of Informal Patent Application (PTO-152)
- 20) ☐ Other:

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### **Election/Restriction**

1. Applicant's election with traverse of Species I in Paper No. 7 is acknowledged. The traversal is on the ground(s) that it would not be an undue burden on the examiner to treat Species II and III in addition to Species I. This is not found persuasive because the basis for requirement of an election of species is not the burden placed upon an examiner, rather the test is that the various species be patentably distinct. In this case, the species are patentably distinct because they comprise structural differences based upon the different mounting requirements: a highback mountable on (I) a snowboard binding, (II) a boot, or (III) a binding interface element. Applicant has not argued that the species are patentably indistinct.

The requirement is still deemed proper and is therefore made FINAL.

2. Claims 24-26 and 48-50 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected Species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in Paper No. 7.

### **Claim Rejections - 35 USC § 102**

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

4. Claims 1-3, 9, 12, 14, 15, 19-23, 27, 33, 36, 38, 39, 43-47, 51-56 are rejected under 35 U.S.C. 102(e) as being anticipated by Rigal (US 6,116,635, cited by applicant). Rigal teaches a highback (4) for a snowboard (2), having a configuration shaped to engage the leg portion of a user; including an upper portion with a main body (13), which may be termed a cassette as claimed, formed of a first material and having a peripheral flange (21), and a lower portion (12)

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formed of a second material of less rigidity than the first material, the lower portion forming a heel cup, the upper portion having a lower section which extends downward to the heel cup and partially serves as a heel cup (figure 3), the lower portion (12) being connected to a heel hoop (10) of a snowboard binding (3) which includes a base plate (7) and at least one adjustable strap (29, 30); the lower portion connected to the binding at two ears (lower ends of 12) with pivotal connectors (17, 16), the upper and lower portions being connected to one another proximate a peripheral flange (21) of the upper member (e.g., sides of 13, by mating apertures in the upper and lower portions, and rivet connectors 18, 19), the flange being connected to the lower portion thereby.

#### **Claim Rejections - 35 USC § 103**

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 13 and 37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rigal in view of Borel (US 5,926,979). Rigal teaches a highback (4) for a snowboard (2), having a configuration shaped to engage the leg portion of a user; including an upper portion with a main body (13), which may be termed a cassette as claimed, formed of a first material and having a peripheral flange (21), and a lower portion (12) formed of a second material of less rigidity than the first material, the lower portion forming a heel cup, the upper portion having a lower section which extends downward to the heel cup and partially serves as a heel cup (figure 3), the lower portion (12) being connected to a heel hoop (10) of a snowboard binding (3) which includes a base plate (7) and at least one adjustable strap (29, 30); the lower portion connected to the binding at two ears (lower ends of 12) with pivotal connectors (17, 16), the upper and lower portions being connected to one another proximate a peripheral flange (21) of the upper member

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(e.g., sides of 13, by mating apertures in the upper and lower portions, and rivet connectors 18, 19), the flange being connected to the lower portion thereby. The reference of Rigal fails to teach the support as having a spine, with the first portion extending along a substantial portion of the spine. Borel teaches a binding for a snowboard having a highback (figure 7) which is provided with a spine (e.g., 521) which extends along a substantial portion of the highback. It would have been obvious to one of ordinary skill in the art at the time of the invention to provide a central spine as taught by Borel to the highback taught by Rigal, along the length of the highback, for the purpose of adjusting the structural characteristics of the highback, particularly with respect to the forward-rearward bending characteristics of the highback.

7. Claim 63 is rejected under 35 U.S.C. 103(a) as being unpatentable over Rigal in view of Carpenter et al. (US 5,261,689). The reference of Rigal is discussed above and fails to teach the highback as being mountable for rotation about a vertical axis. Carpenter et al. teach a snowboard binding having a highback (28) which is mounted to a base (20) with a slotted connection (50, 52, 26) which allows a rotation of the highback about a vertical axis. It would have been obvious to one of ordinary skill in the art at the time of the invention to provide the mounting of the highback of Rigal with a slotted connection as taught by Carpenter et al. for the purpose of allowing the rotational position of the highback to be varied, for example to favor support of one side of a user's leg.

#### **Allowable Subject Matter**

8. Claims 4-8, 10, 11, 16-18, 28-32, 34, 35, 40-42, and 57-62 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

9. Claims 24-26 and 48-50 remain withdrawn from consideration as being drawn to a non-elected species.

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### Conclusion

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Gilliard et al. (US 5,606,808), Black et al. (US 6,206,403), Okajima (US 6,231,066), Challande et al. (US 6,273,450), Bartsch (DE 2,746,980), and Keller (DE 198 02 304) teach support structures of pertinence.

The Group and/or Art Unit location of your application in the PTO has changed. To aid in correlating any papers for this application, all further correspondence regarding this application should be directed to Group Art Unit 3618.

11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to F. Vanaman whose telephone number is (703) 308-0424. Any inquiry of a general nature or relating to the status of this application should be directed to the group receptionist whose telephone number is (703) 308-1113.

Any response to this action should be mailed to:


Assistant Commissioner for Patents  
Washington, DC 20231

or faxed to :

(703) 305-3597 or 305-7687 (for formal communications intended for entry;  
informal or draft communications may be faxed to the same number but should be  
clearly labeled "UNOFFICIAL" or "DRAFT")

**F. VANAMAN**  
**Primary Examiner**  
**Art Unit 3618**

F. Vanaman  
March 19, 2002



3/19/02